

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN PITMAN, individually, and on
behalf of all employees similarly situated.,

Plaintiff,

v.

MACY'S WEST STORES, INC., an Ohio
Corporation; MACY'S INC., an unknown
entity, and DOES 1 through 100, inclusive,

Defendants.

No.: 1:20-cv-01259-NONE-BAM

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AS MODIFIED

(Doc. No. 24)

Before the court for decision are two motions: (1) a motion to compel arbitration filed by defendants Macy's West Stores, Inc. and Macy's Inc. (Doc. No. 13); and (2) plaintiff's motion to amend the notice of removal (Doc. No. 17). Both motions were referred to the assigned magistrate judge for the issuance of findings and recommendations in accordance with 28 U.S.C. § 636(b)(1)(B) and (C). (Doc. No. 21.)

On July 1, 2021, the magistrate judge issued findings and recommendations recommending that defendants' motion to compel arbitration be granted and plaintiff's motion to amend the notice of removal be denied as moot. (Doc. No. 24.) The magistrate judge also recommend ordering defendant to pay the arbitration fees within fourteen (14) days of the date of this order adopting. (*Id.*) Those findings and recommendations were served on the parties and contained notice that any objections thereto were to be filed within fourteen (14) days after

1 service. (*Id.*) On July 15, 2021, defendants filed narrow objections to the timing of their payment
2 of the arbitration fees (Doc. No. 25); no other responses were filed.

3 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(c), this court has conducted a
4 *de novo* review of the case. Having carefully reviewed the entire file, including defendant's
5 objections, the court finds that the findings and recommendations are supported by the record and
6 proper analysis with the exception of the timing of the payment of the arbitration fees by
7 defendants. Defendants point out in their objections that they will have no obligation to pay fees
8 to the American Arbitration Association ("AAA") unless and until plaintiff files a request for
9 arbitration and the AAA sends defendants and invoice for the fees. This warrants a minor
10 technical change to the form of this order as reflected below.

11 Accordingly,

12 1. The findings and recommendations issued on July 1, 2021 (Doc. No. 24) are
13 adopted in full with the exception of the modified directions provided in paragraphs 6 through 8
14 below;

15 2. Defendants' motion to compel arbitration (Doc. No. 13) is GRANTED;

16 3. Plaintiff's motion to amend the notice of removal (Doc. No. 17) is DENIED as
17 moot;

18 4. Plaintiff's request for the award of sanctions (Doc. No. 14 at 12) is DENIED;

19 5. Defendants' request that this matter be dismissed (Doc. No. 13-1 at 18) is
20 GRANTED;

21 6. Within fourteen (14) days of the date of this order, plaintiff shall file a demand for
22 arbitration or notify the court why he has not done so;

23 7. Defendants are ordered to pay the required arbitration fees within fourteen (14)
24 days of receipt of an invoice regarding the fees due. Proof that the filing fee has been paid shall
25 be filed within fourteen (14) days of payment;

26 8. If the above-mentioned invoice is not received by defendants within sixty (60)
27 days of the date of this order, the parties shall, within three additional business days, file a joint
28 status report providing a brief update on the status of the arbitration; and

1 9. The court will retain jurisdiction over this matter until defendants submit proof that
2 the arbitration filing fee has been paid.

3 IT IS SO ORDERED.

4 Dated: **August 6, 2021**


UNITED STATES DISTRICT JUDGE